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Tan Ai Hoon v Lim Wei Kiang

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HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24F-11–02 OF 2015
COLLIN SEQUERAH JC
10 SEPTEMBER 2015

C

Family Law — Divorce — Petition — Presentation of petition before expiration of two years — Whether there were exceptional circumstances for application — Whether application should be allowed

D

The plaintiff/wife applied to present a divorce petition before the expiration of two years from the date of her marriage to the defendant/husband and to be exempted from having the matrimonial dispute referred to a conciliatory body. The exceptional circumstances she relied upon to support the application were that the defendant had forced her to be subject to unnatural sex and that the defendant rarely provided maintenance to her. The defendant denied these allegations and averred that the real reason for the plaintiff's application was that she had a lover whom she intended to marry. In respect of the allegation regarding the non-provision of maintenance the defendant submitted that the plaintiff was gainfully employed and that she had access to the defendant's bank account in which his salary was deposited into every month.

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Held, dismissing the application with costs:

(1) The allegations of unnatural sex were mere averments by the plaintiff and were not substantiated by any medical or police report. Both the averments regarding unnatural sex and maintenance had been credibly denied by the defendant. Under the circumstances, the plaintiff had failed to prove that there were 'exceptional circumstances or hardship' suffered by her (see paras 9–11).

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(2) The legislative intent in imposing the two year bar was to protect the sanctity of marriage as an important institution in society. It was also to give the opportunity to married persons to attempt a reconciliation, no matter how slim the chances (see para 12).

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[Bahasa Malaysia summary

I

Plaintif/isteri memohon petisyen perceraian ini sebelum tamat tempoh dua tahun daripada tarikh perkahwinannya kepada defendan/suami dan untuk dikecualikan daripada pertikaian perkahwinan tersebut dirujuk kepada kepada badan pendamai. Keadaan-keadaan pengecualian yang digunakan untuk menyokong permohonan tersebut adalah bahawa defendan telah memaksa dia

menjadi subjek kepada seks luar tabi dan bahawa defendan jarang memberikannafkah kepadanya. Defendan menafikan kesemua dakwaan ini dan berhujah bahawa alasan sebenarnya untuk permohonan plaintif adalah dia mempunyai kekasih yang dia berniat untuk berkahwin. Berkaitan dakwaan tentang tidak memberikan nafkah defendan berhujah bahawa plaintif adalah bekerja dan dia mempunyai akses kepada akaun bank defendan yang mana gajinya didepositkan setiap bulan.

Diputuskan, menolak permohonan dengan kos:

(1) Dakwaan seks luar tabi adalah hujahan semata-mata oleh plaintif dan tidak disokong oleh apa-apa laporan perubatan atau polis. Kedua-dua hujahan berkaitan seks luar tabi dan nafkah telah dinafikan secara boleh dipercayai oleh defendan. Di bawah keadaan, plaintif telah gagal untuk membuktikan bahawa terdapat 'exceptional circumstances or hardship' dialami olehnya (lihat perenggan 9–11).

(2) Niat undang-undang dalam mengenakan halangan dua tahun adalah untuk melindungi kesucian perkahwinan sebagai institusi penting dalam masyarakat. Ia adalah juga untuk memberi peluang kepada orang-orang yang berkahwin untuk mencuba pendamaian, tidak kira berapa nipisnya peluang tersebut (lihat perenggan 12).]

Notes

For cases on petition, see 7(3) *Mallal's Digest* (5th Ed, 2015) paras 4287–4296.

Cases referred to

Kiranjit Kaur A/P Kalwant Singh v Chandok Narinderpal Singh [2009] MLJU 1241; [2010] 3 CLJ 724, HC (refd)
PMK; Re [1981] N1 211 (refd)

Legislation referred to

Law Reform (Divorce and Marriage) Act 1976 ss 50(2), 106(1)

Ang Khoon Cheong (CP Ang & Co) for the plaintiff.
Tan Lok Heah (Normila bt Mohamad with him) (Tan Lok Heah & Assoc) for the defendant.

Collin Sequerah JC:

[1] The plaintiff's application is two-fold, namely:

(a) to present a divorce petition to the court before the expiration of the period of two years from the date of the marriage; and

(b) exemption from referring the matrimonial difficulty to a conciliatory body.

[2] The law governing applications of this nature is contained in s 50(2) of the Law Reform (Divorce and Marriage) Act 1976 ('the LRA'). A

[3] The applicable test is that of 'exceptional circumstances or hardship suffered by the petitioner'. B

[4] In respect of the exemption to refer matrimonial disputes to the conciliatory body pursuant to s 106(1) of the LRA, the test is of 'exceptional circumstances which make reference to a conciliatory body impracticable'. C

[5] The 'exceptional circumstances' relied upon by the plaintiff is that:

(a) the defendant has forced her to be subject to unnatural sex; and

(b) the defendant rarely provides maintenance to her. D

[6] The defendant on the other hand has denied these allegations. In respect of the allegation regarding non-provision of maintenance, the defendant has submitted that the plaintiff is gainfully employed as a real estate agent.

[7] It was also submitted that the plaintiff has access to the defendant's account and holds an ATM card to the account. This account is also the account in which the defendant's salary is deposited into every month. E

[8] The defendant also avers that the real reason for the plaintiff's application is that she has a lover whom she intends to marry. F

FINDINGS OF THE COURT

[9] The allegations of unnatural sex are unsubstantiated by any medical or police report. In fact in one of the cases cited by the plaintiff, namely *Kiranjit Kaur a/p Kalwant Singh v Chandok Narinderpal Singh* [2009] MLJU 1241; [2010] 3 CLJ 724, the court in allowing a similar application relied upon the case of *Re PMK* [1981] N1 211 where a case of exceptional hardship was held to have been made out by reliance in part upon a medical report. G H

[10] The allegations here are averments made by the plaintiff which are unsubstantiated by any documentary evidence. These averments have been credibly denied by the defendant. The same goes for the allegations regarding maintenance. I

[11] Under the circumstances, I find that the plaintiff has failed to prove that there is 'exceptional circumstances or hardship' suffered by her.

[12] My decision is also in accord with the Legislative intent in imposing the two year bar in order to protect the sanctity of marriage as an important institution in society. It is also to give the opportunity to married persons, no matter how slim the chances may be, to attempt reconciliation.

[13] The plaintiff's application in encl 2 is therefore dismissed with costs.

Application dismissed with costs.

Reported by Kohila Nesan